

Negligent Entrustment

A Tragic Road



Presentation Summary

- What is Negligent Entrustment?
 - What issues are investigated?
 - Ways that negligence is demonstrated
 - Examination of key business practices
 - Sample Cases
 - Resources for More Information
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Disclaimer – No Legal Advice

- I am not an attorney
 - Legal issues are subject to change
 - The specific facts of any case are unique
 - Consult with your own attorney if you have specific concerns
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Survey

- Who has been involved in a Negligent Entrustment investigation?
 - Who has responsibility for safety practice implementation?
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What is Negligent Entrustment?

To charge someone with a trust or duty in an inattentive or careless fashion or without completing required process steps

What is Negligent Entrustment?

“Someone” could include employee, contractor, third party service provider, family member, etc. depending on variables

Two closely related concepts

- Respondeat Superior
- Negligent Hiring



Respondeat Superior

Employer is responsible for the conduct of an employee while the employee is acting in the scope of his/her employment

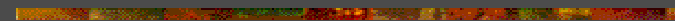


Negligent Hiring

Employer responsible for the conduct of an employee if the employer failed to use due care in hiring and retaining such an employee

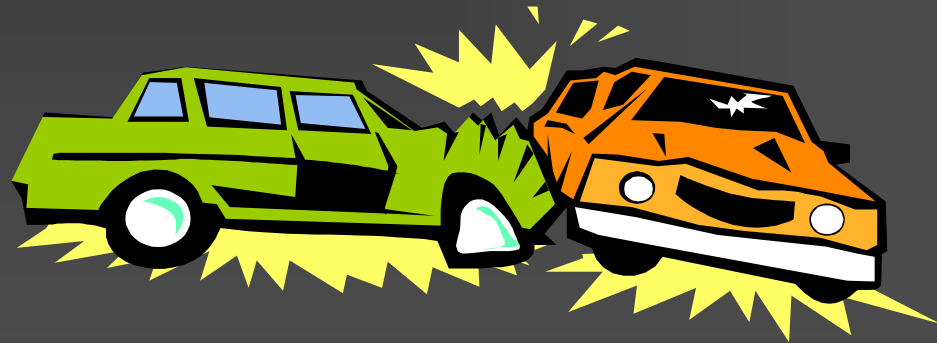
Commercial Vehicle Application

Allowing another person to use a vehicle knowing, or having reason to know, that the use of the vehicle by this person creates a risk of harm to others



Commercial Vehicle Example

A collision occurs and it is later alleged that the employee or contractor was dispatched without due regard for their qualification/ability to safely operate the vehicle



Determination of Negligence

- Two distinct areas of potential negligence to review after a collision:

DRIVER - for the collision itself

MANAGERS - for “allowing” the employee to drive

Determination of Negligence

- Assume driver was negligent
 - Management's policies and practices will be focus of investigation
 1. Were there policies in place?
 2. Were the policies practiced/followed?
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Potential Questions

- Did your company have a policy regarding
 - Driver Selection?
 - Driver Hiring?
 - Driver Orientation and Ongoing Training?
 - How do managers document/verify that the policies are followed?
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Critical Elements



Details to be Investigated

Five Key Issues are Examined

1. Was this driver incompetent?
 2. Did employer know, or have reason to know, of this incompetence?
 3. Did employer actually entrust the vehicle?
 4. Was the driver negligent on the occasion?
 5. Was driver's negligence proximate cause?
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1. Demonstrating Incompetence

- ✓ Was the driver “qualified” to drive?
 - ✓ Subject to specific safety regulations?
 - ✓ In compliance with those regulations?
 - ✓ Possess proper license for vehicle type?
 - ✓ Required “paperwork” was up to date?
 - ✓ License was valid?
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1. Demonstrating Incompetence

- By reason of experience, training, physical qualification was the driver:
 - Able to demonstrate “safe operation” of vehicle?
 - Able to determine that cargo was loaded and/or secured properly/safely
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1. Demonstrating Incompetence

- Use of Federal Motor Carrier Safety Regulations as a “standard” is common
- Potential to apply these standards even if the affected driver does not operate a “commercial motor vehicle”



2. Employer Knew or Should Have Known

- All employment records may be researched
 - Driver's background will be closely examined, and...
 - Facts directly related to the incompetence that are discovered, could have been discovered by the employer
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2. Employer Knew or Should Have Known

- Ignoring a real or potential problem is not an excuse or defense
 - Allowing “exceptions” to business practices (ie. Safety, hiring, discipline, etc.)
 - Documentation showing incompetence without documenting a response action
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2. Employer Knew or Should Have Known

Controversial Statement?

Faulty compliance with business practices is not ideal, but may be better than no establishment of practices or no attempt to comply

3. Employer Entrusted Vehicle?

Entrusted if the driver is performing within the scope of their job duties and the vehicle was not taken without permission



3. Employer Entrusted Vehicle?

What about contractors, third party service providers (ie. security guards) or family members of employer/employee?



4. Driver Negligent in Crash?

- Accident reports or investigations
- Citations/Tickets as a result of the accident
- Accident Photos



5. Driver was Proximate Cause?

- Again, will be determined by investigation, reports and “experts” on crash scenes
 - Was there a direct link between the driver’s incompetence/negligence and the cause of the accident?
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Business Practices

Prevention and “Defense”



Key H.R. and Safety Areas

- Driver recruiting and selection practices
 - New hire evaluation and orientation
 - Ongoing driver review and training
 - Post accident reviews and training
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An Important Note

Never ignore a real or potential problem – there is no defense or excuse by saying I didn't know...



Driver Recruiting & Hiring



Driver Recruiting and Hiring

- How do you recruit drivers?
 - Look at advertising (wording)
 - Specific requirements and qualifications
 - Is “driving ability” a core skill?
 - Up-to-date with pertinent regulations?
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Driver Recruiting and Hiring

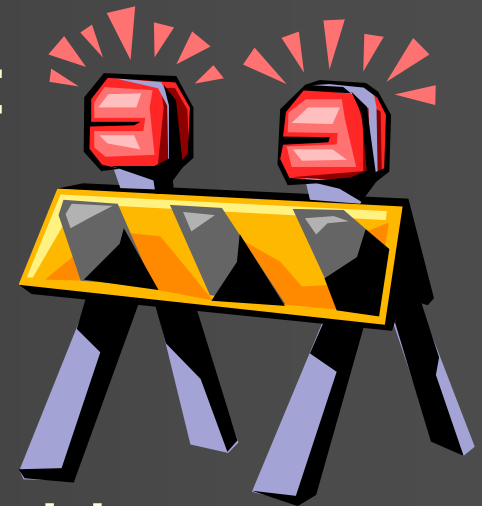
- Is hiring done centrally?
 - Can locations or managers make “exceptions” to guidelines?
 - If “borderline” candidates are hired, what is done to document what will be done to assure safety?
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New Hire Evaluation & Orientation



New Hire Evaluation & Orientation

- What is required by virtue of position?
- Regulations may dictate testing:
 - Road skills
 - Physical
 - Drug and Alcohol
- Document results and deal with any negative exceptions



New Hire Evaluation & Orientation

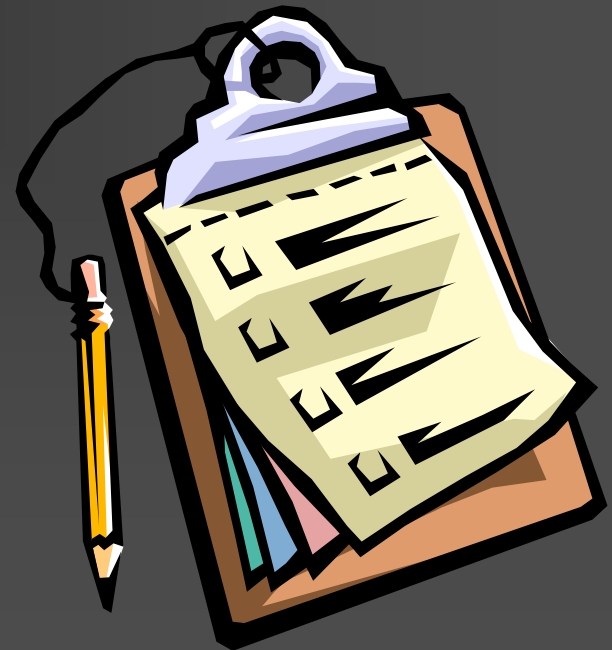
- Familiarize newly hired employees with equipment, routes, procedures
 - Document conversations, receipt of manuals or guidebooks
 - Periodic review and revision of materials
 - Deal with concerns now, not later
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New Hire Evaluation & Orientation

- Administration of records for employees is critical
- Anniversaries of key dates should not be missed
- A system to remind and schedule updates should be put in place



Driver Review & Training

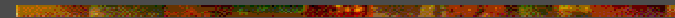
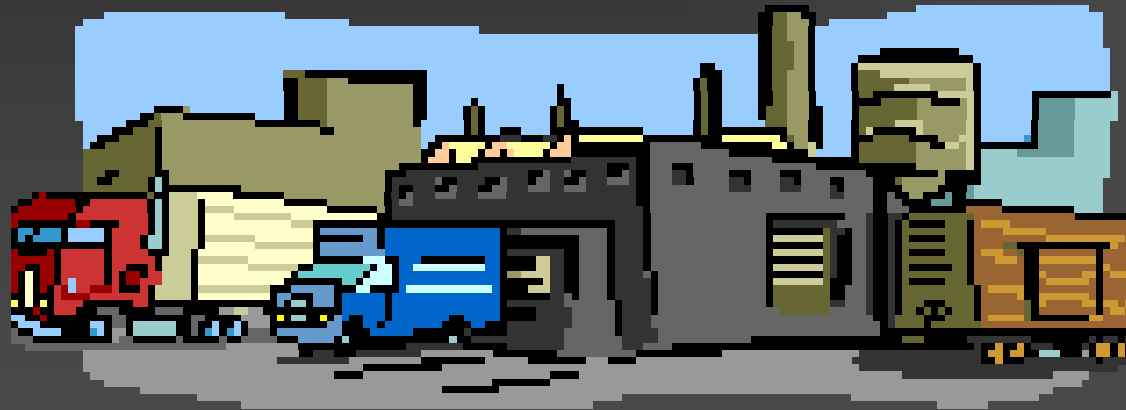


Driver Review and Training

- People change over time and so do their habits
 - Driver review is a periodic revalidation of each driver's qualifications
 - As negative habits are discovered, documentation of coaching and training efforts are needed
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Driver Review

- How do you review and document job performance?



Driver Review

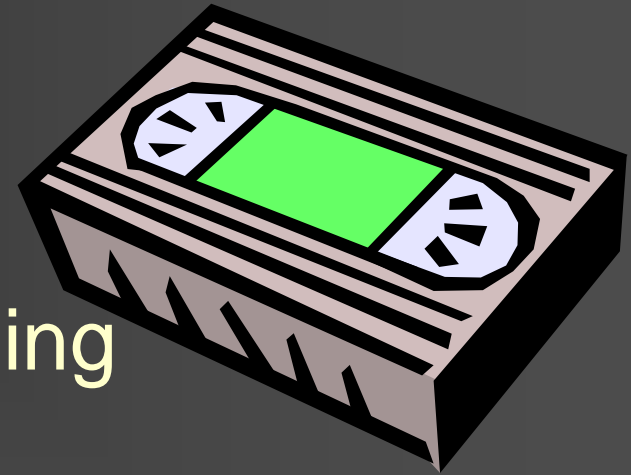
- Periodic management reviews (FMCSR)
 - Motor Vehicle Report
 - 1-800 How's My Driving?
 - Electronic On Board Recorders (Black Box)
 - Ride Along review
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Driver Review and Training

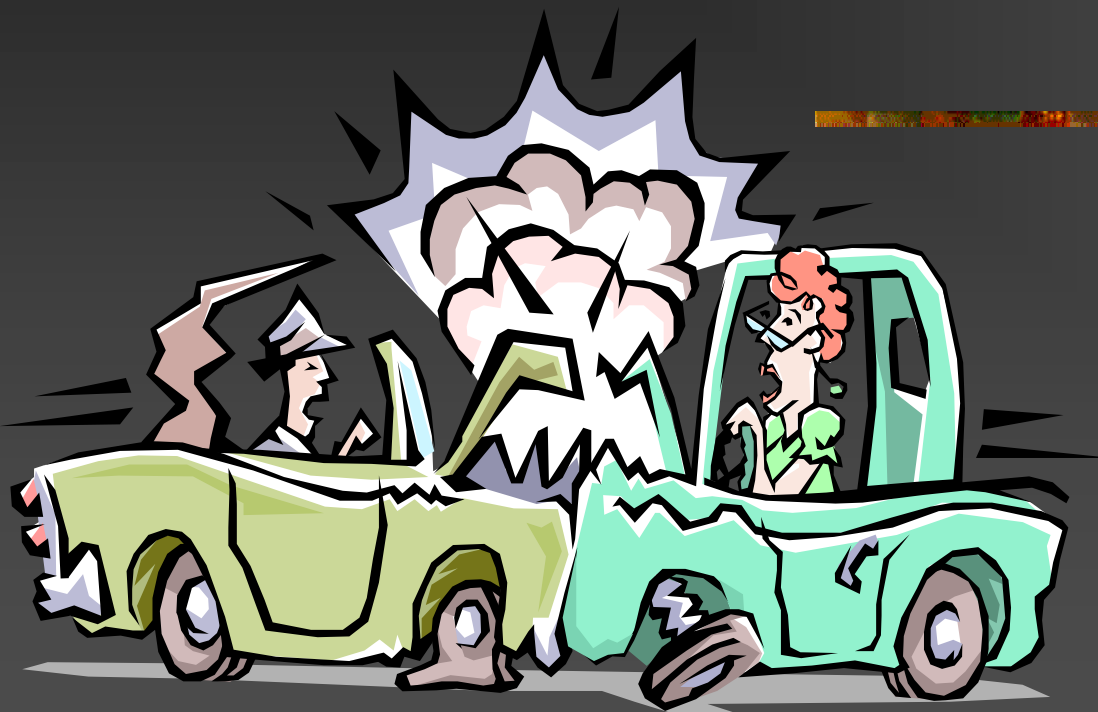
- Coach & counsel for improved performance
 - Praise safe, productive performance
 - Schedule training to correct negative performance that has been discovered
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Driver Training

- Training can be provided as:
 - Traditional Classroom
 - Self-led via Internet, CD ROM, Video, Booklets, etc.
- Document the impact of training (additional review)



Post Accident Reviews & Training



Post Accident Reviews & Training

- Training for drivers and managers on what to do and say following a crash?
- What procedures are followed after a crash?
 - Accident Scene Photos
 - Accident Report Kit
 - Prompt contact with company and police



Post Accident Reviews & Training

- How do you handle crashes where your driver is incapacitated?
 - Who will act on your company's behalf?
 - Was there a fatality involved?
 - Were there passengers, riders or hazardous materials in your vehicle?
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Post Accident Reviews & Training

- Crash report: honest, direct & never humor
 - Consistently review performance of any driver involved in a crash
 - If system failed, make corrections
 - If it is clear that the driver needs training to prevent similar accidents get it done
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Sample Cases





Resources

Where to Get Help

Resources

- Attorney
 - P&C Insurance carriers – Loss Control
 - Agent, Broker
 - Risk Manager, RM Firms
 - Vendors focused on Fleet Safety
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Summary

A Manageable Issue

Summary

- Anyone who is charged with driving should be carefully qualified
 - Business practices should be in place and followed without exceptions
 - Take corrective actions when needed
 - Not knowing is never an excuse
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Questions?

Thank You for Your Participation